

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA Plaintiff, vs. ARTHUR HUGH HENDERSON Defendant.	ORDER Case No. 2:04-CR-00201 DB
------------------------------------------------------------------------------------------------------	------------------------------------------------------------

Before the Court is Defendant's letter filed on May 28, 2008, styled as a motion to reconsider, to place him on probation and run his federal sentence concurrent with his state sentence. On July 20, 2004, Defendant pleaded guilty to possession of a firearm by a convicted felon in the above-captioned case. (Dkt. No. 14.) He was sentenced on September 29, 2004 to seventy-five months in federal custody (running consecutively with his state sentence), followed by thirty-six months of supervised release. (Dkt. No. 23.)

This Court is authorized to modify a defendant's sentence only in specified instances where Congress has expressly granted jurisdiction to do so. *United States v. Blackwell*, 81 F.3d 945, 947 (10th Cir. 1996). A court may modify a sentence in limited circumstances: (1) "upon motion of the Director of the Bureau of Prisons"; (2) "to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure"; or (3) "upon motion of the defendant or the Director of the Bureau of Prisons," or on the court's own motion in cases where the applicable sentencing range "has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A), (c)(1)(B), (c)(2). The first and third

alternatives are inapposite to the instant case.

Under the second alternative, Rule 35 empowers a district court to correct or reduce a defendant's sentence in two instances. First, "the court may correct a sentence that resulted from arithmetical, technical, or other clear error" "within 7 days after sentencing." Fed. R. Crim. P. 35(a). Second, a court has authority to reduce a sentence upon the government's motion if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person. Fed. R. Crim. P. 35(b). Rule 35 does not apply to the instant case.

Because no congressional enactment authorized this Court to modify Defendant's sentence in the instant case, as explained above, this Court lacks jurisdiction to do so.

Accordingly, Defendant's motion is DENIED.

IT IS SO ORDERED

DATED this 30th day of May, 2008.

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style.

Dee Benson
District Court Judge